

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BERNICE MALCOLM,

Plaintiff,

DECISION AND ORDER

09-CV-6421L

v.

HONEOYE FALLS-LIMA CENTRAL
SCHOOL DISTRICT,
KATHY WALLING,

Defendants.


This action is one of a number of lawsuits brought against the Honeoye Falls-Lima Central School District (the “District”) and its Board of Education, administrators and employees, arising out of the employment of plaintiff Bernice Malcolm (“Malcolm”). Familiarity with those cases is presumed. *See generally Malcolm v. Honeoye Falls-Lima Central Sch. Dist. et al.*, 08-CV-6577 (W.D.N.Y. 2009); *Malcolm v. Bd. of Educ. of the Honeoye Falls-Lima Central Sch. Dist. et al.*, 08-CV-6551 (W.D.N.Y. 2008); *Malcolm v. Honeoye Falls-Lima Central Sch. Dist. et al.*, 08-CV-6300 (W.D.N.Y. 2008); *Malcolm v. Honeoye Falls-Lima Sch. Dist.*, 2008-16610 (N.Y. Sup. Ct. Monroe County 2008). All but one of those actions has now been dismissed on the grounds that plaintiff’s claims are barred by a Settlement Agreement she executed at the termination of her employment, on the grounds that plaintiff’s claims lack evidentiary support, or because of the res judicata effect of the initial decisions dismissing plaintiff’s claims. The defendants, the District and one of its employees,

have moved to dismiss the instant complaint on the merits, as well as on the grounds of res judicata (Dkt. #2, #12). For the reasons that follow, those motions are granted.

For the reasons already articulated in the Court's Decision and Order dismissing the related case of *Malcolm v. Honeoye Falls-Lima Central Sch. Dist.*, 08-CV-6577 (Dkt. #41), Malcolm's claims are barred by res judicata. Here, Malcolm alleges discriminatory retaliation by the District and its employees, who she alleges failed to provide a letter of recommendation in the manner promised in the Settlement Agreement. However, in his decision dismissing plaintiff's state court action, Monroe County Supreme Court Judge Hon. Harold L. Galloway not only found that the District had substantially complied with its obligations under the Settlement Agreement, but specifically found that the District had satisfied its obligation to provide plaintiff with a letter of recommendation. (Dkt. #12-1, Exh. 3 at 5). Accordingly, the instant claims, which are virtually identical to those asserted in plaintiff's state action and arise out of the same nucleus of operative facts, are barred by res judicata.

Defendants' motions to dismiss (Dkt. #2, Dkt. #12) are granted, and the complaint is hereby dismissed in its entirety, with prejudice. Defendants' request for a filing injunction is denied as moot, as the Court has already granted identical relief in *Malcolm v. Honeoye Falls-Lima Central Sch. Dist.*, 08-CV-6577 (Dkt. #41). Plaintiff's pending discovery-related motions (Dkt. #18, Dkt. #22) are dismissed as moot.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 14, 2010.